



STATE ETHICS COMMISSION BULLETIN

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Commission to File Legislation Seeking Limited Regulatory Authority

At its April meeting, the State Ethics Commission voted unanimously to approve proposed legislation providing the Commission with limited regulatory authority.

If enacted into law, the legislation would authorize the Commission to promulgate regulations that would exempt certain activity from the conflict of interest law. Already, a number of individuals and organizations have expressed their interest or support in this legislation.

"Exempting trivial and inconsequential conduct from the strictures of the conflict of interest law will, the Commission believes, promote and strengthen public confidence in government and in the conflict of interest law itself," said Executive Director Peter Sturges.

The legislation is entitled *An Act Authorizing the State Ethics Commission to Provide Exemptions from the Conflict of Interest Law*. It

would amend section 3(a) of G.L. c. 268B, the Commission's enabling legislation, to provide that the Commission may publish regulations to "carry out the purposes of chapter two hundred and sixty-eight A, provided that said rules and regulations shall be limited to providing exemptions from the provisions of sections three through seven, sections eleven through fourteen, sections seventeen through twenty and section twenty-three."

One of the Commission's major goals is to conduct a comprehensive review of the conflict of interest statute, G.L. c. 268A, and to draft legislation to clarify and simplify the law. In March, the Commission and its staff completed its review of the law and identified various provisions for amendment. It will be some time before a final draft of such comprehensive legislation is completed.

The Commission has decided to file the legislation seeking limited regulatory

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Statements of Financial Interests Due May 1 for Appointed Officials

Elected Officials to file by May 27

The filing deadline for state and county appointed officials who are required to file annual statements of financial interests for calendar year 2002 is Thursday, May 1. For elected officials in state and county government, the deadline is Tuesday, May 27, 2003.

This year, more than 4,800 officials are required to file financial disclosure forms. Last year, after the Ethics Commission initiated on-line filing, 44% of those required to file did so on-line. This year, the Commission hopes even more filers will take advantage of electronic filing.

Commission staff members are available daily between 9 a.m. and 5 p.m. to provide walk-in or telephone assistance to filers who wish to file electronically.

According to Executive Director Peter Sturges, "On-line filing is easy and

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Ethics Primer: The Code of Conduct

Periodically, the *Bulletin* will discuss a particular area of the conflict of interest law. The information provided is educational in nature and should not be considered legal advice. Persons with questions about a specific situation should contact the Ethics Commission for free confidential advice.

The state's conflict of interest law, M.G.L. c. 268A imposes "standards of conduct" on all state, county and municipal employees that are "in addition to the other provisions" in

G.L. c. 268A. Although §23 does not impose criminal penalties, as do the other sections of the conflict of interest law, the Commission may impose civil penalties for violations of any of the § 23 restrictions of standards of conduct.

Incompatible Employment

First, § 23 (b)(1) prohibits public employees from accepting other

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From the Executive Director

"The Value of Ethics"

In times of crisis when hard choices have to be made, the value of ethics in government cannot be discounted. As Oscar Wilde suggested, one may know the price of everything and the value of nothing.

The laws enforced by the Ethics Commission, the conflict of interest law and the financial disclosure law, were designed to promote confidence in government and to maintain the integrity of public officials. The laws seek to foster public trust that decisions are made for the right reasons, not because of personal or private interests that the decision makers may have. Indeed, maintaining confidence in government is fundamental to the fabric of our democratic society.

No laws can guarantee the right outcome -- and reasonable people will often disagree on which outcome is the right one. The laws, however, help to ensure that the decision-making process is a just and fair one. When the decisions are hard the public needs to be even more assured that they are made for the right reasons.

As one commentator noted, "Few things make an American citizen angrier than to find out that he did not get a fair shake; and a secret personal interest of a deciding official is a kind of dice loading."

In the language of a recent advertising slogan, confidence in government is "priceless. For everything else there's . . ."

Peter Sturges

Commission Members Spring, 2003

Augustus F. Wagner, Jr., Chair
Christine M. Roach, Vice-Chair
Elizabeth J. Dolan
J. Owen Todd

Carol Carson
Editor

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authority while it continues to work on more comprehensive legislation with its staff and other interested persons.

The limited regulatory power that the Commission seeks with this legislation is qualitatively different from any other change that the Commission is considering. It does not make any substantive or even technical changes to the conflict of interest law.

It will make it possible, however, for the Commission to eliminate through regulation many of the ambiguities in the statute and to create clear lines or reasonable "safe harbors" for elected and appointed officials. If enacted into law, the legislation will permit the Commission to exempt trivial and inconsequential conduct. The Commission then would have the authority to establish regulatory exemptions in the area of gifts, for example, in instances when such

conduct poses no genuine risk of affecting the performance of public employees or the public's confidence in government.

For example, currently a gift or award of a \$75 plaque or bowl given to honor a public employee for dedicated service raises questions under the conflict of interest law. The proposed legislation would authorize the Commission to adopt regulations to clarify how such gifts may be given consistent with the conflict of interest law and, in effect, provide a "safe harbor" for the recipients and the donors of such an award.

The Commission looks forward to working with the Governor and leadership in the House and Senate to enact this legislation. Anyone interested in obtaining a copy of the proposed legislation should contact the Commission at 617-727-0060.

www.mass.gov/ethics

The Commission's website continues to expand and, as it expands, the number of users continues to grow.

Dynamic downloadable forms are now available at www.mass.gov/ethics/Formlist/htm. These forms allow a user to choose a form, fill it out on line, print it, sign it and submit it.

In February, the full texts of advi-

sory opinions and enforcement actions for the years 1992-1999 were added to the site. Previously, full texts were available only for 2000 to the present.

Four Primers addressing issues faced by municipal officials, have been added to the educational materials page, www.state.ma.us/ethics/educational_materials.html.

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saves time and money for both the Commonwealth and the individual filer."

Last year, over 99% of filers met the deadline. Only 12 individuals failed to file in a timely manner. Of this number, 10 paid fines ranging from \$50 to \$1,000 for the late submission of an SFI and the other two are subjects of preliminary inquiries.

Failure to file a statement of financial interests by the deadline may result in civil penalties. These penalties are imposed according to the follow-

ing schedule:

1-10 days delinquent:	\$ 50
11-21 days delinquent:	\$100
21-30 days delinquent:	\$200
31 days or more:	\$500

These penalties are doubled for repeated late submission of an SFI.

Failure to file may result in civil penalties of up to \$2,000. In addition, no employee required to file who has not done may continue to perform his or her duties or to receive compensation.

Ethics Primer: Code of Conduct

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employment involving compensation of substantial value, the responsibilities of which are *inherently incompatible* with the responsibilities of his public office.

Example: a police officer would be prohibited from serving as a private security guard in his town because his duties as a law enforcement official are incompatible with the demands of his private employer.

Unwarranted Privileges

Section 23(b)(2) prohibits a public employee from using or attempting to use his or her official position to secure for himself or others *unwarranted* privileges or exemptions which are of *substantial value* and which are not properly available to similarly situated individuals;

Example: A governmental official may not use his governmental time or resources, such as office space, word processors, telephones, photo copiers or fax machines, to conduct a private business. Section 23(b)(2) dictates that the use of public time and resources must be limited to serving public rather than private purposes.

The Commission has also emphasized that the use of one's public position to solicit or coerce special benefits, of substantial value, for oneself or others will constitute a use of one's official position to secure unwarranted privileges or exemptions not properly available to similarly situated individuals. In addition, the Commission has advised municipal officials that they must apply objective criteria to their official duties and that if, for example, a board member cannot be objective about a matter, he should abstain.

Appearance of Conflict

Section 23(b)(3) prohibits a public employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any

person can improperly influence or unduly enjoy the public employee's favor in the performance of his or her official duties, or that he or she is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his or her appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

Section 23(b)(3) has often been described as the section that covers "appearances" of conflicts of interest. The statute as it currently reads, however, does not use the term "appearance." It is worth emphasizing that §23(b)(3) prohibits acting "in a manner which would cause a *reasonable person*, having knowledge of the relevant circumstances, to conclude" that the official would be unduly influenced or unduly favor any party or person.

Example: A reasonable person could conclude that a board of health member might favor or disfavor his cousin's application. Although the cousin is not a member of his immediate family under §19, the family link would implicate §23(b)(3). To dispel such a reasonable conclusion, the board of health member should make a written disclosure to his appointing authority, describing the relevant facts of the family relationship and the official action, prior to his acting as a board member. If the board member were popularly elected, she must make a disclosure that is "public in nature." The Commission has advised that elected municipal officials should make such disclosures in writing and file them as public records with their municipal clerk. In some circumstances, it may also be prudent to reiterate the disclosure as part of the meeting minutes.

Confidential Information

Section 23(c)(1) prohibits a current or former municipal employee from

accepting "employment or engag[ing] in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position." Section 23(c)(2) prohibits him from "improperly disclos[ing] material or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest."

Adequate disclosure

Section 23(d) provides that "any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provision of this section. The state ethics commission . . . shall not enforce the provisions of this section with respect to any such exempted activity."

Example: Because adequate disclosure may be part of complying with §§19 or 20 (which were discussed in previous Ethics Primers), a municipal employee may comply with the disclosure requirements of §23(b)(3) by complying with the former. For further guidance regarding whether more than one disclosure is required, you should review the matter with municipal counsel or contact the Ethics Commission.

Additional Standards

Finally, §23(e) states that "nothing in this section shall preclude any . . . head of [a municipal] agency from establishing and enforcing additional standards of conduct." This section allows agencies to impose conditions that are more restrictive than §23 and all other sections of the conflict law.

Note: Although §23(e) does not prohibit an agency head from establishing and enforcing such additional conditions/restrictions, nothing in the conflict law affirmatively grants an agency head the legal authority to do so. Such authority is an issue of municipal law.

Future primers will discuss the application of G.L. c. 268A, §23 in particular situations. Please contact the Ethics Commission's Legal Division at (617) 727-0060 for advice.

"The use of public time and resources must be limited to serving public rather than private purposes."

Recent Enforcement Matters

The Ethics Commission investigates numerous cases alleging violations of the conflict of interest and financial disclosure laws each year. While the Commission resolves most matters confidentially, it resolves certain cases publicly.

A disposition agreement is a voluntary written agreement entered into between the subject and the Commission in which the subject admits violating the law and agrees to pay a civil penalty. Disposition agreements are matters of public record once a case is concluded.

A Public Education Letter (PEL) is issued where the Commission found reasonable cause to believe that the law was violated but chose to resolve the case with a PEL because it believes the public interest would best be served by doing so. A PEL does not require the subject to admit violating the law and is issued publicly with the subject's consent. (Prior to December 2002, these letters were referred to as Public Enforcement Letters.)

The Commission does not comment on any matter under investigation, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential.

Full texts of the Disposition Agreements and Public Enforcement Letters can be found on the Commission's website, www.mass.gov/ethics.

In the Matter of Susan P. Bernstein

Framingham Planning Board member Susan P. Bernstein admitted violating the state's conflict of interest law and agreed to pay a civil penalty of \$2,000. Bernstein, a real estate agent, violated G.L. c. 268A, §17(c) by appearing before the selectmen seeking Town Meeting approval to rezone a client's property. The property was sold on February 22, 2002 and Bernstein received a commission of \$6,400.63. The Agreement highlights that Bernstein had attended State Ethics Commission educational seminars and received prior warnings about this type of violation.

In the Matter of Francisco Cabral

Former Fall River Wiring Inspector Francisco Cabral paid a \$750 civil penalty to resolve allegations that he violated the state's conflict of interest law. Cabral, who was a full-time wiring inspector between February 2001 and December 2002, inspected electrical work performed by his son, Timothy Cabral, on several occasions between November 2001 and March 2002. These actions violated G.L. c. 268A, §19.

In the Matter of Ralph Crossen

Former Barnstable Building Commissioner Ralph Crossen entered into a disposition agreement and agreed to pay \$1,100, a \$1,000 civil penalty and a forfeiture of \$100, for violating of G.L. c. 268A, §18(a). In November 2002, the Commission's Enforcement Division initiated public proceedings against Crossen alleging that he violated the conflict of interest law by acting as an agent for a private client in connection with a matter in which he participated as a building commissioner.

In the Matter of Michael J. D'Amico

Former Quincy City Councilor Michael J. D'Amico was fined \$1,250 for violating the state's conflict of interest law. D'Amico admitted that he violated G.L. c. 268A, §19 by submitting a letter on city council stationery to the Quincy Zoning Board of Appeals (ZBA) requesting that Lappen Auto Supply Company (Lappen), which abuts D'Amico's property at 57-59 Penn Street, install landscaping, retaining walls and fences. Lappen subsequently paid \$6,700 for landscaping work at D'Amico's property. Lappen also provided similar landscaping to a second abutter's property.

In the Matter of Francis H. Dubay

Erving Selectman Francis H. Dubay was fined \$1,000 for violating the state's conflict of interest law by serving as the town's assistant treasurer. Dubay violated G.L. c. 268A, §19 by participating in the decision to appoint himself to the part-time position. Because he received compensation for the position, he also violated §20 by having a financial interest in a second contract or position with the town. According to the Disposition Agreement, "if Dubay had not cast the deciding vote, he would not have been appointed to the position." Dubay resigned his position as assistant treasurer.

In the Matter of James Foster

Former Milton School Department administrator of building and grounds James Foster entered into a disposition agreement with the State Ethics Commission to resolve allegations made by the Commission in May 2001 that he used a school department account to purchase auto parts for his or his family's personal vehicles. Foster, who paid a \$2,000 civil penalty, admitted that he violated G.L. c. 268A, §23(b)(2) by using his position to misappropriate pub-

SECTION BY SECTION: THE CONFLICT LAW, G.L. c 268A

- Section 17(c) of G.L. c. 268A prohibits a municipal employee from acting as agent for anyone other than the municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest.
- Section 18(a) of the conflict of interest law prohibits a former municipal employee from acting as agent for or receiving compensation from anyone other than the municipality in connection with a particular matter in which the municipality is a party and in which he participated as a municipal employee.
- Section 19 generally prohibits a municipal employee from officially participating in matters in which an immediate family member has a financial interest. By signing the septic system certificate of compliance and occupancy permit for a property owned by her brother, Longo participated in a matter affecting the financial interest of an immediate family member.
- Section 20 generally prohibits a municipal employee from having a financial interest in a contract made by a municipal agency of the same city or town.
- Section 23(b)(2) prohibits a public employee from using his or her position to obtain for the employee or others an unwarranted privilege of substantial value not properly available to similarly situated individuals.
- Section 23(b)(3) prohibits a public employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his or her official duties.

lic moneys for personal use. In a related matter, on May 22, 2002, Foster pleaded guilty to larceny over \$250 and other criminal acts. He was also fined \$30,453.59, received a two year concurrent suspended sentence and was ordered to perform 100 hours of community service.

In the Matter of James J. Hartnett, Jr.

Retired State Personnel Administrator James J. Hartnett, Jr. admitted violating G.L. c. 268A, the state's conflict of interest law, and agreed to pay a \$4,000 civil penalty to resolve allegations that he improperly received meals, entertainment and gifts from National Association of Government Employees (NAGE) president Kenneth T. Lyons. Hartnett's duties as Personnel Administrator included meeting with union leaders to address union issues such as collective bargaining contract negotiations, benefits and grievances. Hartnett admitted that his receipt of lunches at Anthony's Pier 4, food and entertainment at holiday parties and the gift of a Seiko watch violated §23(b)(2) and 23(b)(3) of the conflict law. Hartnett also admitted that his failure to disclose the items he received from Lyons in his statements of financial interests (SFI) for the years 1997 through 2000 violated §7 of G.L. c. 268B, the state's financial disclosure law. Hartnett could have avoided violating §23(b)(3) of the conflict law by making an advance writ-

ten disclosure to his appointing authority of the facts that would otherwise lead to such a conclusion. Hartnett made no such disclosure. The Commission also issued a Public Education Letter citing Hartnett for seeking employment help from Lyons for a daughter's close friend. The Commission concluded that there was reasonable cause to believe that Hartnett violated §23(b)(3) and 23(b)(2) of the conflict law by soliciting and accepting help from Lyons to get his daughter's boyfriend a job as a police officer.

In the Matter of Kendell Longo

Former Rowley Board of Health Secretary Kendell Longo ("Longo"), paid a \$4,000 civil penalty to resolve allegations that she violated the state's conflict of interest law. Longo, who served as secretary between 1996 and 1999, signed a septic system certificate of compliance and an occupancy permit for a property at 31 Red Pine Way owned by her brother, Brett Longo ("Brett"). These actions violated G.L. c. 268A, §§19 and 23(b)(2). The Commission's Enforcement Division initiated public proceedings against Longo in November 2002. The Disposition Agreement, which was approved by the Commission, concluded these proceedings.

In the Matter of Robert G. Renna

Robert G. Renna, former program director of the Lexington-Arlington-Burlington-Bedford-Belmont Collabora-

tive (LABBB), paid a \$4,000 civil penalty to resolve allegations that he violated the conflict of interest law by using LABBB resources and funds to operate Northeast Reality Therapy Associates (NERTA), a private business association formed by Renna, two of his LABBB subordinates and a LABBB consulting psychologist. NERTA provided training in reality therapy, a counseling and classroom management technique for instructors of students with developmental challenges. Renna admitted violating M.G.L. c. 268A, §§19 and 23(b)(2). The Commission's Enforcement Division initiated public proceedings against Renna in April 2001. The Disposition Agreement, which was approved by the Commission, concluded these proceedings. Prior to entering the Disposition Agreement, Renna reimbursed LABBB \$9,000 and resigned from his position.

In the Matter of John Sawyer

Former Gloucester Electrical Inspector John Sawyer paid a \$2,000 civil penalty to resolve allegations that he violated G.L. c. 268A, §19. Sawyer, who served as an electrical inspector between 1988 and 2002, inspected electrical work performed by his brother, Joseph Sawyer, on numerous occasions between January 1999 and February 2001.

Litigation Update

The Executive Director, and by delegation, the Commission's Legal Division attorneys, have special assistant attorney general status. This status permits Legal Division attorneys to represent the Commission in court proceedings, under the oversight of the Office of the Attorney General. The Commission has recently been involved in three pieces of litigation.

State Ethics Commission v. Jovanovic. The Commission was successful in collecting a \$2000 civil penalty, plus a \$500 interest charge, that was owed by Jovanovic for violations of G.L. c. 268A, §§2 and 3. Jovanovic had refused to pay the civil penalty levied by the Commission.

Vineyard Conservation Society, Inc. et. al. v. State Ethics Commission

The Commission is defending a formal advisory opinion issued to Richard Toole, a member of the Martha's Vineyard Commission who wants to become a board member of the Vineyard Conservation Society, a private non-profit organization. The Society is challenging the Commission's opinion by means of a declaratory judgment action and writ of certiorari. The Commission has filed a Motion to Dismiss the action.

Triplett v. Town of Oxford

In a case pending before the Supreme Judicial Court, the Ethics Commission and

the Office of the Attorney General jointly filed an amicus brief in support of the Town of Oxford. Former Police Chief Triplett is seeking an interpretation of G.L. c. 258, § 13 that would require the Town to indemnify him for his legal fees in defending against charges of a criminal conflict of interest by the Attorney General's Office, where his conviction was overturned by the Supreme Judicial Court and civil conflict of interest charges by the State Ethics Commission where several of the charges were jointly dismissed as part of a settlement agreement and two charges were dismissed after an adjudicatory hearing.

POCKET GUIDES TO THE CONFLICT OF INTEREST LAW

*Clip & Save**

The Top Ten Rules Municipal Employees Need to Know About the Conflict of Interest Law

10. Whether elected or appointed, paid or unpaid, part-time or full-time, **you are a municipal employee** subject to the conflict of interest law — even “consultants” may be considered municipal employees.
9. **Don't** accept bribes (don't sell or trade your official actions).
8. **Don't** accept meals, tickets or gifts from anyone to thank or reward you for any official action you have taken or may take or to influence you in any official action.
7. **Be** loyal to your municipality:
 - **Don't** accept money from **or** represent anyone other than your municipality for work involving your municipality.
 - **Don't** accept paid, private work that is incompatible with your public position and duties.
 - **Don't** improperly disclose or use confidential information that you obtained as a municipal employee.
6. **Don't** use your official position to get special benefits for yourself or anyone else that are not available to the general public.
5. **Don't** create appearances of conflicts of interest: Publicly disclose significant relationships or circumstances that might cause a reasonable person to think that you might be unfair or biased in your official actions.
4. **Don't** act on any matter affecting your own financial interests or those of family members, partners or organizations with which you have a private relationship.
3. **Don't** double dip. Don't accept an additional (even unpaid) municipal position before seeking legal advice.
2. **After** you leave municipal service:
 - **Don't** accept money from **or** represent anyone other than the municipality you served if the private work involves a matter that you participated in or worked on as a municipal employee.
 - Strictly **observe** the one-year “cooling off” rule: **Don't** represent or appear before municipal agencies for a private party on matters that were under your “official responsibility” when you were a municipal employee.

AND THE NUMBER ONE RULE IS ... Get Advice!

Most of these rules have exceptions. Some are simple; some are not. Free legal advice is readily available from your municipality's attorney or the **State Ethics Commission (617-727-0060)**.

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*For information about getting quantities of the pocket guides in double business card format for distribution in your agency or municipality, please contact Carol Carson by email at ccarson@eth.state.ma.us.